IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

ORDER

Maharana Mahendra Singh vs. The State of Raj. & ors.

S.B.Civil Misc. Petition No.76/1990
in
S.B.Civil Misc. Appeal No.126/1987.

Under Section 36 of the Code of Civil Procedure.

Date of Judgment: December 9th ,2004.

PRESENT

HON'BLE MR. PRAKASH TATIA,J.

Mr. D.R. Bhandari, for the Petitioner.
Mr.Rajendra Mehta & Mr.Arun Bhansali for the respandent No.2.
Mr. N.M. Lodha for respondents no.1,3 and 4.
None appeared for applicant A.Subhramanayam and Lake Shore Palace Hotel Pvt. Ltd.

BY THE COURT:

REPORTABLE

This Misc. Petition under Section 36 of the Civil Procedure Code read with Section 151, I.P.C. has been filed by the petitioner on 16.5.1990 raising objection that the order of this Court passed 3 years ago on 8.7.1987 was not executed properly, therefore, necessary directions may be issued in this matter as prayed by the petitioner.

2. During pendency of the petition, the petitioner submitted another application under the same Section 36,C.P.C. and prayed that the respondents are not obeying the orders passed in other proceedings, therefore, action may be taken against them. The petitioner even sought order against the learned District Judge directing him to obey the order of the Supreme Court.

3. The case has a long history. It will be necessary to narrate facts leading to this controversy. The petitioner filed one suit for partition in the court of District Judge, Udaipur claiming his share in the property alleging that the property held by Maharana Bhagweat Singh Ex-Ruler of Udaipur is HUF property. The suit was filed on 22.4.1983. Maharana Bhagwat Singh alleged to have executed a Will in respect of his properties on 15.5.1984 and appointed non-petitioner no.2 Maharana Arvind Singh and one Shri A.Subhramanyam, as Executors. Maharana Bhagwat Singh expired on 3.11.1984. It appears that after the death of Maharana Bhagwat Singh, the S.H.O., Ghantaghar, Udaipur submitted petition under Section 145, Cr.P.C. Before the City Magistrate, Udaipur and in that property the City Magistrate, appointed S.H.O., Ghantaghar, Udaipur as Receiver for the part of the property of Shambhu Niwas Palace and part of the property was taken over by the

Receiver on 24.11.1984. A revision petition was filed to challenge the order of the City Magistrate appointing the Receiver for the property before this Court. The revision petition was allowed by this Court vide order dated 15.5.1986 and the proceedings taken under Section 145, Cr.P.C. were quashed. When proceedings under Section 145, Cr.P.C. were quashed by this Court, the learned City Magistrate submitted an application before the court of Addl. District Judge stating therein that he is in difficulty as to whom the property should be handed over and, therefore, necessary instructions be issued to him. On this application, a reference was made to this Court. It appears that Lake Palace Hotel Private Limited, Shri Arvind Singh and Lake Shore Palace Hotel Private Limited also filed criminal misc. petitions in the same matter which were registered as S.B.Cr.Misc. Petition No.120/1985, 121/1986 and 142/1986 respectively. All these objection petitions along with references were decided by this Court vide order dated 3.7.1986. This Court held that the reference was wholly misconceived. After holding so, the High Court advised the City Magistrate to follow the observations made by this Court in the earlier decision given in the case of Ram Lal vs. Mangu (1968 RLW 37). This Court further directed the S.H.O., Ghantaghar, Udaipur who was Receiver of the property to release the property from his possession after expiry of one month from that

order,i.e., from 3.7.1986. This Court observed that during this period, the civil court concerned, where the cases are pending between the parties, would be at liberty to decide the application for appointment of Receiver if any is pending and the parties should be at liberty to move any other application before the civil court because there cannot be any restriction against filing of the fresh application for appointment of the Receiver.

4. After the above order of this Court dated 3.7.1986, two fresh applications were filed before the trial court in civil suit; one by Maharana Mahendra Singh under Order 39 Rules 1 and 2 read with Section 151, C.P.C. against Shri Arvind Singh and Shri A.Subhramanyam and other was filed by Smt.Sushila Kumari against Maharana Mahendra Singh and Shri Arvind Singh. The learned District Judge, vide order dated 1.8.1986, dismissed those applications seeking appointment of the Receiver and also dismissed the application for grant of temporary injunction, however, while rejecting the said applications, the learned District Judge passed the order so as to make arrangements for management of the properties in dispute and ordered the S.H.O.(Receiver appointed under the provisions of the Criminal Procedure Code) to act as Receiver for further period of two months on the same terms and conditions as per the order of the City Magistrate. The trial court further directed that in view of the judgment dated

3.7.1986 passed by the High Court, the City Magistrate would complete all the formalities of winding up of the proceedings under Sections 145 and 146, Cr.P.C. including the release of possession of the attached properties in favour of entitled parties. Since the term of the Receiver was going to expire on 2.8.1986, the period was extended by the civil court in the manner as mentioned above and it was ordered that the S.H.O. Shall continue to function as a Receiver under the authority of the court, i.e. Addl.District Judge, Udaipur for further period of two months from 2.8.1986.

5. The order of the learned Addl.District Judge, Udaipur dated 1.8.1986 was challenged by filing two revisions by Shri Arvind Singh which are S.B.Civil Revision Petition Nos.429/1986 and 430/1986. Those revision petitions were allowed by this Court vide order dated 1.10.1986. This Court held that once the order appointing Receiver was terminated by this Court and further the learned Addl. District Judge has rejected the applications filed by Mahendra Singh and Smt.Sushila Kumari for appointment of Receiver, he had no business to order for continuance of the S.H.O. as Receiver on the same terms and conditions under which he was asked to work by the learned City Magistrate. The operative part of the order passed in S.B.Civil Revision Petition Nos.429/1986 and 430/1986 is relevant for the purpose of deciding this

appeal, which is as under:-

> "I, therefore, accept these revisions and set aside the direction of the learned Addl. District Judge in respect of the continuation of the Receiver appointed by the Criminal court after August 2,1986. The Receiver shall handover the possession of the properties to the party from whom he had taken over the possession at the time of his appointment of a Receiver keeping view the observations of this court in order dated July 3, 1986, it will be proper that an inventory of all the articles which the Receiver had taken in his possession at the time of appointment and which will now be released by him it proposed in the presence of the parties or their representative."

6. After above order dated 1.10.1986, five different applications were filed, (1) by Shri Arvind Singh, (2) by Lake Shore Palace Hotel Private Limited, Udaipur, (3) by Lake Palace Hotel and Motels Private Limted, (4) by Ex. Herhighness Smt.Sushila Kumari and (5) by petitioner Mahendra Singh. All submitted their claim for the possession for part of the properties which were under attachment. All the five applications were decided by the learned Addl.District Judge by order dated 31.7.1987. The learned Addl.District Judge ordered that the possession of the lower portion of Shambhoo Niwash be handed over to Shri Arvind Singh and Shri A.Subhramanyam who are the executors of the Will and possession of Fateh Prakash Darbar Palace shall be handed over to the principal officer of the Lake Shore Palace Hotel Private Limited. The order of the learned Addl. District Judge dated 31.7.1987 was

challenged by preferring Misc.Appeal No.126/1987 before this Court. This Misc.Appeal No.126/1987 was allowed by this Court vide order dated 8.9.1987 with following directions:-

> "The result of the entire discussion is that S.H.O. Ghantaghar(Receiver) is directed to hand over the possession of the disputed properties to the persons from whom he has over the possession of those properties at the time when he was possession as Receiver. If any difficulty arises, he bring that fact to the notice of this Court by placing facts before it and seek directions of this Court in that regard and not from the court of learned Addl. District. He is further directed to to prepare an inventory of the articles of which he is supposed to have taken in possession at the time of his appointment as Receiver and which will be released by him in favour of the persons from whom he took over their possession at the time of his appointment as Receiver. The inventor of all such articles lying in these properties be prepared in triplicate in the presence of the parties or their representatives and signatures of all the parties concerned must be obtained on all three copies of this inventory. The original copy be filed in the court of the learned Addl.District Judge No.1, Udaipur, the other copy should be sent to this Court for its record and the third copy be kept by him as an evidence of handing over of the possession of property as well as articles lying therein to the parties concerned."

7. After three years from the above order, the petitioner Mahendra Singh submitted this petition on 16.5.1990 raising objection against the manner in which the order of this Court dated 8.9.1987 was executed.

8. The petitioner alleged that the petitioner unofficially learnt in December, 1988 that respondent no.4-

S.H.O., Ghangaghar, Udaipur (Receiver) had given possession of the various rooms in lower storey of Shanbhoo Niwas Palace to respondent no.2 without preparing any inventory of articles lying in them(para 12 of the petition). On further enquiry, the petitioner came to know that a letter was sent by the Special Secretary (Home) to respondent no.4 directing him to hand over property of Shambhoo Niwas Palace to respondent no.2, Copy of the said letter is placed on record as Ex.3(para 13). In para 15, the petitioner submitted that if respondent no.4 has given possession of the various room in the lower storey of Shambhoo Niwas to respondent no.2 in which most valuable articles were lying and their possession has been given to the respondent no.2, then the act of the S.H.O. is wholly illegal and without jurisdiction and is contrary to the specific directions of this Court. The petitioner, therefore, submitted this petition under Section 36 of the Civil Procedure Code and sought the following reliefs:-

> (i). That the Hon'ble Court be pleased to clarify the position and direct the Respondent NO.4 to prepare Inventories of all Articles lying in the rooms of Shambhu Niwas Palace of which the Receiver had taken possession at the time of his appointment as Receiver.
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> (ii). That it is further prayed that the Receiver be directed to prepare these Inventories of valuable articles lying in these rooms in triplicate in presence of parties or their representatives and obtain signatures of all the parties concerned on all the three copies of this Inventory. He may further be directed to file the original copy of inventories before the learned

Addl. District Judge, Udaipur, and the other copy should be sent to this Hon'ble Court and third copy should be kept by him as evidence of handing over of possession of properties as well as articles lying therein to the parties concerned.

(iii). That as has been submitted earlier as will be clear from the FARD Ex.5- prepared by Receiver at the time of his appointment, possession of rooms of lower storey of Shambhu Niwas Palace and all articles contained therein be handed over to the petitioner no.1 according to the language and spirit of Order Ex.1 as they had been taken possession from the representative of the petitioner No.1.

(iv). If the Hon'ble court is of opinion that the Respondent nO.4 is not in a position to decide as to from which party possession was taken of the rooms of the lower storey of Shambhu Niws Palace, the Receiver may be directed to make an application again before this Hon'ble court for clarification as he had done vide application dated 16.12.1987.

(v). That the respondent No.4 may then after obtaining clarification be directed to handover the possession of all the rooms of lower storey of Shambhu Niwas Palace and valuable articles contained therein and after preparation of Inventories as submitted in the preceding paras, be directed to handover the possession of properties and valuables contained therein according to directions of this Hon'ble court given after clarification.

(vi). That similarly inventory of the valuable contained in rooms of Shiv Niwas Palace be also prepared and possession thereof be given to the petitioner.

(vii). In the alternative:

If the Hon'ble Court is of the view that respondent NO.4 has delivered possession of the property i.e. Rooms and valuable articles, Jewelery etc., contained therein of Shambhoo-Vilas Palace to Respondent No.2, then as already submitted this action of respondent No.4 is wholly illegal, void, against principles of Natural justice and against the specific directions of

this Hon'ble court and is therefore wholly void. In the circumstances respondent No.2 be ordered to return the possession of Rooms and all the jewellery's and valuable Articles contained therein to the Petitioner.

(viii). Any other order which this Hon'ble court deems fit be granted in favour of the petitioner."

9. The petitioner has placed on record uncertified copy of the order dated 8.9.1987 passed by this Court in S.B.C.Misc. Appeal No.126/1987, uncertified copy of the order dated 1.10.1986 passed in S.B.Civil Revision Petition Nos.429/86 and 430/86, copy of the application filed under Section 151, Cr.P.C. by the S.H.O., P.S. Ghantaghar, Udaipur dated 16.12.1987 along with copy of the affidavit of said S.H.O., copy of the letter alleged to have been issued to the Special Secretary to the Govt. of Rajasthan dated 7.12.1988, copy of the application for withdrawal of the application which was filed under Section 151, Cr.P.C. by the S.H.O by which he sought directions from the court, uncertified photo-stat copy of the report submitted by the S.H.O., Ghantaghar, Udaipur to the City Magistrate, Udaipur dated 25.1.1985 and uncertified copy of the Fard dated 20.11.1984.

10. A detailed reply was filed by respondent no.2. Respondent no.2 raised objection that according to the language and spirit of order dated 8.9.1987(Ex.1), no direction can be issued to the Receiver under the inherent powers or under any other provisions directing him to hand

over the possession of the properties to the petitioner. It is submitted that in view of the order passed by this Court, respondent no.4 was required to give possession of the properties to the persons from whom he had taken possession at the time of his appointment as Receiver. The respondent no.4 has already given possession of various rooms in the lower storey of Shambhu Niwas palace to respondent no.2 and also delivered possession of other attached properties, Fateh Praksh Darbar Hall, Laka Palace Hotel and Motels Private Limited in compliance of the order Ex.1 and this fact has been admitted by the petitioner in his application, nothing survives to be done by this Court after execution of the order. It is also submitted that the petitioner cannot turn around and submit that handing over possession of the said properties and articles lying therein by respondent no.4 to respondent no.2 is illegal or without jurisdiction. It is further submitted that the petitioner was fully conscious of the fact that the properties in question were never in his possession and respondent no.4 therefore, the receiver did not and could not have taken possession of any of the property from the petitioner as receiver, therefore, the petitioner did not at any time approach this Hon'ble Court seeking direction against respondent no.4 to hand over possession of the properties to him and not to respondent no.2.

11. According to the learned counsel for the

respondent no.2, the petitioner took the chance with respondent no.4 and now he cannot be allowed to challenge the compliance made by respondent no.4, of the order of this Court Ex.1. Since the High Court vide order dated 9.8.1987 (Ex.1) directed the Receiver to hand over possession of the attached property to the persons from whom he had taken over their possession at the time when he was appointed Receiver, therefore, it was for respondent no.4 to ascertain the persons who were in possession at the time of attachment and hand over possession to those persons. Respondent no.4 complied with the directions and handed over possession of the properties to the persons from whom possession was taken. The petitioner since has not impleaded necessary parties in this petition who were given possession of the other attached properties by the Receiver in pursuance of the directions of this Court, therefore, no relief can be granted to the petitioner.

12. Respondent no.2 also narrated the facts about the litigation between the parties and the orders passed by the courts including the orders which were passed in probate proceeding. It is also submitted that one contempt petition was filed by the petitioner Mahendra Singh and Smt.Sushila Kumari alleging disobedience of the order of this Court dated 8.9.1987 (Ex.1). The allegations in that petition were that the possession of the properties was not delivered to the rightful person. That contempt petition

was dismissed by the Division Bench of this Court. It was observed by this Court as under:-

> "In the instant case, the S.H.O. Ghantaghar (respondent No.4) did not continue his possession over the disputed properties and he handed over their possession to whom he considered to be entitled. Admittedly the order dated September 8, 1987, did not prohibit him from delivering the possession of the disputed properties to the respondent No.1. Similarly the respondent No.4 was directed to prepare an inventory of articles which he was supposed to have taken at the time of his appointment as the receiver and which were released by him in favour of the respondent No.1. It is not in dispute that inventory was prepared vide para 3(1) (page 12) of the contempt petition."

13. It is also submitted on behalf of respondent no.2 that after the application under Section 36, the petitioner again submitted another application on 2.8.2004 in this very petition, that too under Section 36 read with Section 151 C.P.C. stating inter alia about pendency of the partition suit and temporary injunction order dated 2.12.1985 passed therein and order of this Court dated 11.6.1993. In the second petition, the petitioner in the changed circumstance, prayed (1) for direction to respondent no. 2 to adhere the stay order/injunction order , (2) any direction regarding the properties as almost 15 years have elapsed since the property was handed over to respondent no.2 who has already dealt with the properties, (3) action be taken against respondents for violating the stay order/injunction and (4) the District Judge, Udaipur

be directed to adhere to Supreme Court Order and for adjudication of the application on the basis of submissions of the petitioner.

14. According to the learned counsel for the non-petitioner, the petitioner has by implication, in view of the subsequent developments in other litigation, by filing another application waived the claim as made in original application. The synopsis was also furnished on behalf of respondent no.2

15. I considered the submissions of the learned counsel for the parties and perused the record.

16. It is clear from the facts of the case that the petitioner himself after admitting that the receiver had given possession of the various rooms in the lower storey and Shambhu Niwas Palace to respondent no.2 in the year 1988 but has filed the present petition under Section 36, C.P.C. on 16.9.1990 after almost one and half years from the action taken by the respondent no.4-S.H.O., Ghantaghar, Udaipur (Receiver) in pursuance of the order of this Court dated 8.9.1987. It is also relevant to mention here that the petitioner did not explain why he did not seek execution of the order dated 8.9.1987 if it was not executed by the Receiver till December, 1988. The petitioner also did not claim that he put his claim before

the Receiver. Be that as it may be, the petitioner appears to have realised the situated and submitted another application under the same provisions, that is under Section 36, C.P.C. on 2.8.2004 seeking different directions from the directions which he sought in his earlier application. It appears from the prayer made in the application dated 2.8.2004 that the petitioner is seeking direction against the respondent to strictly adhere to the stay order/injunction already passed. For this relief, the petitioner should have approached to the courts where the orders for stay or injunction were passed in case they have not been obeyed by any of the respondents. The petitioner is seeking another relief of direction from this court about the property which was handed over to the respondent no.2 and admitted that since last 15 years, the respondent no.2 is dealing with the property. If the property was handed over to the various persons or companies in pursuance of the order of this Court dated 8.7.1988 then till it is not held that delivery of possession to those persons was wrong, why any direction be issued against them after 15 years? This was the relevant fact because of the reason that according to the petitioner himself that there are already stay and injunction orders passed by the other competent courtS. The petitioner also sought relief of action against respondent no.4 for violating the stay/injunction orders of the court. For that also, the petitioner should have approached the courts where the

orders were passed and the persons who violated the orders. It is also not clear what are those stay orders and who and how the stay orders were flouted ? Allegations are absolutely vague, therefore, cannot be examined in application under Section 36, C.P.C. Therefore, I do not find any substance in the application which was filed on 2.8.2004.

17. It will be worthwhile to mention here that in the application dated 16.5.1990 also, the petitioner is seeking virtually execution of the order dated 8.9.1987. The petition itself is absolutely misconceived. Section 36 of the Civil Procedure Code only provides that provision made in the Civil Procedure Code for execution of the decrees could be invoked for execution of the orders passed by the Court. Meaning thereby, if any order is passed by the court and it has not been complied with by the party against whom the order was passed then the party seeking relief under the order of the court may apply for execution of the order in the same manner in which any one could have submitted execution petition in case the order would have been a decree of the court in his favour. Section 36, C.P.C. itself is not a provision for execution of the orders but it makes the provision made for execution of the decrees to apply mutates mutandis for execution of the orders also. If the petitioner had intention to take benefit of the provision for execution of the orders by taking help of

Section 36, C.P.C. then he should have submitted execution petitioner under Order 21, C.P.C. with the help of Section 36 C.P.C. Since Section 36 provides that the provision of execution of the decrees can be invoked for execution of the orders then the only course open for the petitioner was to seek execution under the provisions made for execution of the decrees.

18. The application submitted by the petitioner appears to be misconceived further because of the reason that according to the petitioner himself, the order dated 8.9.1987 has been complied with by respondent no.4 (Receiver) but not in the manner in which it should have been executed. Therefore, in fact the petitioner is not seeking execution of the order of this Court dated 8,9,1987 but the petitioner in fact has grievance against the wrong execution of the order dated 8.9.1987. For this, the petitioner should have raised objection in accordance with law by challenging the action of the respondent no.4 by placing on record all material on the basis of which he is objecting against the action of respondent no.4. That has not been done by the petitioner by laying down factual foundation in the petition and the petitioner has filed the petition without verifying the facts as the petitioner himself says that the petitioner unofficially learnt in December, 1988 that respondent no.4-S.H.O., Ghantaghar, Udaipur had given possession of the various rooms to respondentno.2.

19. Further in view of the reply of respondent no.2, the entire properties have not been handed over to respondent no.2 and some of the properties have been handed over to the other parties but they were not made parties in this petition by the petitioner despite the objection of respondent no.2. Therefore, also there is no reason for this Court to issue any direction to any of the respondents.

20. It will be worthwhile to mention here that since the petitioner relies upon the order of this Court passed as back as in the year 1987 and admitted that the respondent no.2 is in possession of the property which was delivered to him and dealing with the property since last 15 years. Therefore, also no relief at such belated stage can be granted to the petitioner.

21. In view of above discussion, I do not find any merit in the petition filed under Section 36 of the Civil Procedure Code as the petition is misconceived. The petition is, therefore, dismissed. There will be no order as to costs.

(PRAKASH TATIA),J.

mlt.